

CONFERENCE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE NO. 2

FOR

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 3

AN ACT

To repeal sections 565.184, 630.005, 630.140, 630.165, 630.167, 630.725, and 630.755, RSMo, and to enact in lieu thereof nineteen new sections relating to mental health, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 565.184, 630.005, 630.140, 630.165,
2 630.167, 630.725, and 630.755, RSMo, are repealed and nineteen
3 new sections enacted in lieu thereof, to be known as sections
4 565.184, 565.210, 565.212, 565.214, 565.216, 565.218, 565.220,
5 630.005, 630.127, 630.140, 630.163, 630.165, 630.167, 630.725,
6 630.755, 630.925, 630.927, 630.950, and 630.975, to read as
7 follows:

8 565.184. 1. A person commits the crime of elder abuse in
9 the third degree if he:

10 (1) Knowingly causes or attempts to cause physical contact
11 with any person sixty years of age or older or an eligible adult

1 as defined in section 660.250, RSMo, knowing the other person
2 will regard the contact as harmful or provocative; or

3 (2) Purposely engages in conduct involving more than one
4 incident that causes grave emotional distress to a person sixty
5 years of age or older or an eligible adult, as defined in section
6 660.250, RSMo. The course of conduct shall be such as would
7 cause a reasonable person age sixty years of age or older or an
8 eligible adult, as defined in section 660.250, RSMo, to suffer
9 substantial emotional distress; or

10 (3) Purposely or knowingly places a person sixty years of
11 age or older or an eligible adult, as defined in section 660.250,
12 RSMo, in apprehension of immediate physical injury; or

13 (4) Intentionally fails to provide care, goods or services
14 to a person sixty years of age or older or an eligible adult, as
15 defined in section 660.250, RSMo. The [cause] result of the
16 conduct shall be such as would cause a reasonable person age
17 sixty or older or an eligible adult, as defined in section
18 660.250, RSMo, to suffer physical or emotional distress; or

19 (5) Knowingly acts or knowingly fails to act in a manner
20 which results in a grave risk to the life, body or health of a
21 person sixty years of age or older or an eligible adult, as
22 defined in section 660.250, RSMo.

23 2. Elder abuse in the third degree is a class A
24 misdemeanor.

25 565.210. 1. A person commits the crime of vulnerable
26 person abuse in the first degree if he or she attempts to kill or
27 knowingly causes or attempts to cause serious physical injury to,
28 a vulnerable person, as defined in section 630.005, RSMo.

1 2. Vulnerable person abuse in the first degree is a class A
2 felony.

3 565.212. 1. A person commits the crime of vulnerable
4 person abuse in the second degree if he or she:

5 (1) Knowingly causes or attempts to cause physical injury
6 to a vulnerable person, as defined in section 630.005, RSMo, by
7 means of a deadly weapon or dangerous instrument; or

8 (2) Recklessly causes serious physical injury to any
9 vulnerable person, as defined in section 630.005, RSMo.

10 2. Vulnerable person abuse in the second degree is a class
11 B felony.

12 565.214. 1. A person commits the crime of vulnerable
13 person abuse in the third degree if he or she:

14 (1) Knowingly causes or attempts to cause physical contact
15 with any vulnerable person as defined in section 630.005, RSMo,
16 knowing the other person will regard the contact as harmful or
17 offensive; or

18 (2) Purposely engages in conduct involving more than one
19 incident that causes grave emotional distress to a vulnerable
20 person, as defined in section 630.005, RSMo. The result of the
21 conduct shall be such as would cause a vulnerable person, as
22 defined in section 630.005, RSMo, to suffer substantial emotional
23 distress; or

24 (3) Purposely or knowingly places a vulnerable person, as
25 defined in section 630.005, RSMo, in apprehension of immediate
26 physical injury; or

27 (4) Intentionally fails to provide care, goods or services
28 to a vulnerable person, as defined in section 630.005, RSMo. The

result of the conduct shall be such as would cause a vulnerable person, as defined in section 630.005, RSMo, to suffer physical or emotional distress; or

(5) Knowingly acts or knowingly fails to act with malice in a manner that results in a grave risk to the life, body or health of a vulnerable person, as defined in section 630.005, RSMo; or

(6) Is a person who is a vendor, provider, agent, or employee of a department operated, funded, licensed, or certified program and engages in sexual contact, as defined by subdivision (3) of section 566.010, RSMo, or sexual intercourse, as defined by subdivision (4) of section 566.010, RSMo, with a vulnerable person.

2. Vulnerable person abuse in the third degree is a class A misdemeanor.

3. Actions done in good faith and without gross negligence that are designed to protect the safety of the individual and the safety of others, or are provided within accepted standards of care and treatment, shall not be considered as abuse of a vulnerable person as defined in this section.

4. Nothing in this section shall be construed to mean that a vulnerable person is abused solely because such person chooses to rely on spiritual means through prayer, in lieu of medical care, for his or her health care, as evidenced by the vulnerable person's explicit consent, advance directive for health care, or practice.

565.216. The department of mental health shall investigate incidents and reports of vulnerable person abuse using the procedures established in sections 630.163 to 630.167, RSMo, and,

1 upon substantiation of the report of vulnerable person abuse,
2 shall promptly report the incident to the appropriate law
3 enforcement agency and prosecutor. If the department is unable
4 to substantiate whether abuse occurred due to the failure of the
5 operator or any of the operator's agents or employees to
6 cooperate with the investigation, the incident shall be promptly
7 reported to appropriate law enforcement agencies.

8 565.218. 1. When any physician, physician assistant,
9 dentist, chiropractor, optometrist, podiatrist, intern, resident,
10 nurse, nurse practitioner, medical examiner, social worker,
11 licensed professional counselor, certified substance abuse
12 counselor, psychologist, physical therapist, pharmacist, other
13 health practitioner, minister, Christian Science practitioner,
14 facility administrator, nurse's aide or orderly in a residential
15 facility, day program or specialized service operated, funded or
16 licensed by the department or in a mental health facility or
17 mental health program in which people may be admitted on a
18 voluntary basis or are civilly detained pursuant to chapter 632,
19 RSMo; or employee of the departments of social services, mental
20 health, or health and senior services; or home health agency or
21 home health agency employee; hospital and clinic personnel
22 engaged in examination, care, or treatment of persons; in-home
23 services owner, provider, operator, or employee; law enforcement
24 officer; long-term care facility administrator or employee;
25 mental health professional; peace officer; probation or parole
26 officer; or other nonfamilial person with responsibility for the
27 care of a vulnerable person, as defined by section 630.005, RSMo,
28 has reasonable cause to suspect that such a person has been

1 subjected to abuse or neglect or observes such a person being
2 subjected to conditions or circumstances that would reasonably
3 result in abuse or neglect, he or she shall immediately report or
4 cause a report to be made to the department in accordance with
5 section 630.163, RSMo. Any other person who becomes aware of
6 circumstances which may reasonably be expected to be the result
7 of or result in abuse or neglect may report to the department.
8 Notwithstanding any other provision of this section, a duly
9 ordained minister, clergy, religious worker, or Christian Science
10 practitioner while functioning in his or her ministerial capacity
11 shall not be required to report concerning a privileged
12 communication made to him or her in his or her professional
13 capacity.

14 2. Any person who knowingly fails to make a report as
15 required in subsection 1 of this section is guilty of a class A
16 misdemeanor and shall be subject to a fine up to one thousand
17 dollars. Penalties collected for violations of this section
18 shall be transferred to the state school moneys fund as
19 established in section 166.051, RSMo, and distributed to the
20 public schools of this state in the manner provided in section
21 163.031, RSMo. Such penalties shall not be considered charitable
22 for tax purposes.

23 3. Every person who has been previously convicted of or
24 pled guilty to failing to make a report as required in subsection
25 1 of this section and who is subsequently convicted of failing to
26 make a report under subsection 2 of this section is guilty of a
27 class D felony and shall be subject to a fine up to five thousand
28 dollars. Penalties collected for violation of this subsection

1 shall be transferred to the state school moneys fund as
2 established in section 166.051, RSMo, and distributed to the
3 public schools of this state in the manner provided in section
4 163.031, RSMo. Such penalties shall not be considered charitable
5 for tax purposes.

6 4. Any person who knowingly files a false report of
7 vulnerable person abuse or neglect is guilty of a class A
8 misdemeanor and shall be subject to a fine up to one thousand
9 dollars. Penalties collected for violations of this subsection
10 shall be transferred to the state school moneys fund as
11 established in section 166.051, RSMo, and distributed to the
12 public schools of this state in the manner provided in section
13 163.031, RSMo. Such penalties shall not be considered charitable
14 for tax purposes.

15 5. Every person who has been previously convicted of or
16 pled guilty to making a false report to the department and who is
17 subsequently convicted of making a false report under subsection
18 4 of this section is guilty of a class D felony and shall be
19 subject to a fine up to five thousand dollars. Penalties
20 collected for violations of this subsection shall be transferred
21 to the state school moneys fund as established in section
22 166.051, RSMo, and distributed to the public schools of this
23 state in the manner provided in section 163.031, RSMo. Such
24 penalties shall not considered charitable for tax purposes.

25 6. Evidence of prior convictions of false reporting shall
26 be heard by the court, out of the hearing of the jury, prior to
27 the submission of the case to the jury, and the court shall
28 determine the existence of the prior convictions.

1 7. Any residential facility, day program or specialized
2 service operated, funded or licensed by the department that
3 prevents or discourages a patient, resident or client, employee
4 or other person from reporting that a patient, resident or client
5 of a facility, program or service has been abused or neglected
6 shall be subject to loss of their license issued pursuant to
7 sections 630.705 to 630.760, and civil fines of up to five
8 thousand dollars for each attempt to prevent or discourage
9 reporting.

10 565.220. Any person, official or institution complying with
11 the provisions of section 565.218, in the making of a report, or
12 in cooperating with the department in any of its activities
13 pursuant to sections 565.216 and 565.218, except any person,
14 official, or institution violating section 565.210, 565.212, or
15 565.214 shall be immune from any civil or criminal liability for
16 making such a report, or in cooperating with the department,
17 unless such person acted negligently, recklessly, in bad faith,
18 or with malicious purpose.

19 630.005. As used in this chapter and chapters 631, 632, and
20 633, RSMo, unless the context clearly requires otherwise, the
21 following terms shall mean:

22 (1) "Administrative entity", a provider of specialized
23 services other than transportation to clients of the department
24 on behalf of a division of the department;

25 (2) "Alcohol abuse", the use of any alcoholic beverage,
26 which use results in intoxication or in a psychological or
27 physiological dependency from continued use, which dependency
28 induces a mental, emotional or physical impairment and which

1 causes socially dysfunctional behavior;

2 (3) "Chemical restraint", medication administered with the
3 primary intent of restraining a patient who presents a likelihood
4 of serious physical injury to himself or others, and not
5 prescribed to treat a person's medical condition;

6 (4) "Client", any person who is placed by the department in
7 a facility or program licensed and funded by the department or
8 who is a recipient of services from a regional center, as defined
9 in section 633.005, RSMo;

10 (5) "Commission", the state mental health commission;

11 (6) "Consumer", a person:

12 (a) Who qualifies to receive department services; or

13 (b) Who is a parent, child or sibling of a person who
14 receives department services; or

15 (c) Who has a personal interest in services provided by the
16 department. A person who provides services to persons affected by
17 mental retardation, developmental disabilities, mental disorders,
18 mental illness, or alcohol or drug abuse shall not be considered
19 a consumer;

20 (7) "Day program", a place conducted or maintained by any
21 person who advertises or holds himself out as providing
22 prevention, evaluation, treatment, habilitation or rehabilitation
23 for persons affected by mental disorders, mental illness, mental
24 retardation, developmental disabilities or alcohol or drug abuse
25 for less than the full twenty-four hours comprising each daily
26 period;

27 (8) "Department", the department of mental health of the
28 state of Missouri;

1 (9) "Developmental disability", a disability:

2 (a) Which is attributable to:

3 a. Mental retardation, cerebral palsy, epilepsy, head
4 injury or autism, or a learning disability related to a brain
5 dysfunction; or

6 b. Any other mental or physical impairment or combination
7 of mental or physical impairments; and

8 (b) Is manifested before the person attains age twenty-two;
9 and

10 (c) Is likely to continue indefinitely; and

11 (d) Results in substantial functional limitations in two or
12 more of the following areas of major life activities:

13 a. Self-care;

14 b. Receptive and expressive language development and use;

15 c. Learning;

16 d. Self-direction;

17 e. Capacity for independent living or economic
18 self-sufficiency;

19 f. Mobility; and

20 (e) Reflects the person's need for a combination and
21 sequence of special, interdisciplinary, or generic care,
22 habilitation or other services which may be of lifelong or
23 extended duration and are individually planned and coordinated;

24 (10) "Director", the director of the department of mental
25 health, or his designee;

26 (11) "Domiciled in Missouri", a permanent connection
27 between an individual and the state of Missouri, which is more
28 than mere residence in the state; it may be established by the

1 individual being physically present in Missouri with the
2 intention to abandon his previous domicile and to remain in
3 Missouri permanently or indefinitely;

4 (12) "Drug abuse", the use of any drug without compelling
5 medical reason, which use results in a temporary mental,
6 emotional or physical impairment and causes socially
7 dysfunctional behavior, or in psychological or physiological
8 dependency resulting from continued use, which dependency induces
9 a mental, emotional or physical impairment and causes socially
10 dysfunctional behavior;

11 (13) "Habilitation", a process of treatment, training, care
12 or specialized attention which seeks to enhance and maximize the
13 mentally retarded or developmentally disabled person's abilities
14 to cope with the environment and to live as normally as possible;

15 (14) "Habilitation center", a residential facility operated
16 by the department and serving only persons who are mentally
17 retarded, including developmentally disabled;

18 (15) "Head of the facility", the chief administrative
19 officer, or his designee, of any residential facility;

20 (16) "Head of the program", the chief administrative
21 officer, or his designee, of any day program;

22 (17) "Individualized habilitation plan", a document which
23 sets forth habilitation goals and objectives for mentally
24 retarded or developmentally disabled residents and clients, and
25 which details the habilitation program as required by law, rules
26 and funding sources;

27 (18) "Individualized rehabilitation plan", a document which
28 sets forth the care, treatment and rehabilitation goals and

1 objectives for patients and clients affected by alcohol or drug
2 abuse, and which details the rehabilitation program as required
3 by law, rules and funding sources;

4 (19) "Individualized treatment plan", a document which sets
5 forth the care, treatment and rehabilitation goals and objectives
6 for mentally disordered or mentally ill patients and clients, and
7 which details the treatment program as required by law, rules and
8 funding sources;

9 (20) "Investigator", an employee or contract agent of the
10 department of mental health who is performing an investigation
11 regarding an allegation of abuse or neglect or an investigation
12 at the request of the director of the department of mental health
13 or his designee;

14 (21) "Least restrictive environment", a reasonably
15 available setting or mental health program where care, treatment,
16 habilitation or rehabilitation is particularly suited to the
17 level and quality of services necessary to implement a person's
18 individualized treatment, habilitation or rehabilitation plan and
19 to enable the person to maximize his functioning potential to
20 participate as freely as feasible in normal living activities,
21 giving due consideration to potentially harmful effects on the
22 person and the safety of other facility or program clients and
23 public safety. For some mentally disordered or mentally retarded
24 persons, the least restrictive environment may be a facility
25 operated by the department, a private facility, a supported
26 community living situation, or an alternative community program
27 designed for persons who are civilly detained for outpatient
28 treatment or who are conditionally released pursuant to chapter

632, RSMo;

(22) "Mental disorder", any organic, mental or emotional impairment which has substantial adverse effects on a person's cognitive, volitional or emotional function and which constitutes a substantial impairment in a person's ability to participate in activities of normal living;

(23) "Mental illness", a state of impaired mental processes, which impairment results in a distortion of a person's capacity to recognize reality due to hallucinations, delusions, faulty perceptions or alterations of mood, and interferes with an individual's ability to reason, understand or exercise conscious control over his actions. The term "mental illness" does not include the following conditions unless they are accompanied by a mental illness as otherwise defined in this subdivision:

(a) Mental retardation, developmental disability or narcolepsy;

(b) Simple intoxication caused by substances such as alcohol or drugs;

(c) Dependence upon or addiction to any substances such as alcohol or drugs;

(d) Any other disorders such as senility, which are not of an actively psychotic nature;

(24) "Mental retardation", significantly subaverage general intellectual functioning which:

(a) Originates before age eighteen; and

(b) Is associated with a significant impairment in adaptive behavior;

(25) "Minor", any person under the age of eighteen years;

1 (26) "Patient", an individual under observation, care,
2 treatment or rehabilitation by any hospital or other mental
3 health facility or mental health program pursuant to the
4 provisions of chapter 632, RSMo;

5 (27) "Psychosurgery",

6 (a) Surgery on the normal brain tissue of an individual not
7 suffering from physical disease for the purpose of changing or
8 controlling behavior; or

9 (b) Surgery on diseased brain tissue of an individual if
10 the sole object of the surgery is to control, change or affect
11 behavioral disturbances, except seizure disorders;

12 (28) "Rehabilitation", a process of restoration of a
13 person's ability to attain or maintain normal or optimum health
14 or constructive activity through care, treatment, training,
15 counseling or specialized attention;

16 (29) "Residence", the place where the patient has last
17 generally lodged prior to admission or, in case of a minor, where
18 his family has so lodged; except, that admission or detention in
19 any facility of the department shall not be deemed an absence
20 from the place of residence and shall not constitute a change in
21 residence;

22 (30) "Resident", a person receiving residential services
23 from a facility, other than mental health facility, operated,
24 funded or licensed by the department;

25 (31) "Residential facility", any premises where residential
26 prevention, evaluation, care, treatment, habilitation or
27 rehabilitation is provided for persons affected by mental
28 disorders, mental illness, mental retardation, developmental

1 disabilities or alcohol or drug abuse; except the person's
2 dwelling;

3 (32) "Specialized service", an entity which provides
4 prevention, evaluation, transportation, care, treatment,
5 habilitation or rehabilitation services to persons affected by
6 mental disorders, mental illness, mental retardation,
7 developmental disabilities or alcohol or drug abuse;

8 (33) "Vendor", a person or entity under contract with the
9 department, other than as a department employee, who provides
10 services to patients, residents or clients;

11 (34) "Vulnerable person", any person in the custody, care,
12 or control of the department that is receiving services from an
13 operated, funded, licensed, or certified program.

14 630.127. 1. The department of mental health shall develop
15 rules, guidelines, and protocols for an initial notification to a
16 parent or guardian of a patient, resident, or client when first
17 entering the care and custody of the department, or when first
18 entering a facility licensed, certified, or funded by the
19 department. Such notification shall notify the parent or
20 guardian, or a consumer who is his or her own guardian, of the
21 possibility of a person being placed in the facility with the
22 patient, resident, or client, who falls in one of the following
23 categories:

24 (1) Individuals who are required to register as a sexual
25 offender, under sections 589.400 to 589.425, RSMo; or

26 (2) Individuals who have been determined to lack capacity
27 to understand the proceedings against him or her or to assist in
28 his or her own defense under section 552.020, RSMo, for offenses

1 the person would have otherwise been required to register as a
2 sexual offender under sections 589.400 to 589.425, RSMo.

3 2. Such rules, guidelines and protocols developed under
4 subsection 1 of this section shall include the process and
5 mechanisms for assessing risk, for planning and providing care
6 and safety, and for the provision of services and supports
7 necessary to mitigate risk for persons residing in a state
8 facility or facility licensed, certified, or funded by the
9 department. Such protocols shall also provide a mechanism for
10 the parent or guardian, or the consumer who is his or her own
11 guardian, to raise any concerns and to seek consultation about
12 the placement.

13 3. The department of mental health shall develop rules,
14 guidelines, and protocols for notifying a parent or guardian of a
15 patient, resident, or client, or a consumer who is his or her own
16 guardian, residing in a state facility or facility licensed,
17 certified, or funded by the department, that a person required to
18 register as a sexual offender under sections 589.400 to 589.425,
19 RSMo, is residing in or has been placed in the same state
20 facility, or facility licensed, certified, or funded by the
21 department as the patient, resident, or client. Such protocols
22 shall provide a mechanism for the parent or guardian, or the
23 consumer who is his or her own guardian, to raise any concerns
24 and to seek consultation prior to placement of the person
25 required to register as a sexual offender.

26 4. The department of mental health shall develop rules,
27 guidelines, and protocols to obtain consent from the parent or
28 guardian of a patient, resident, or client, or a consumer who is

1 his or her own guardian and who falls under the category in
2 subdivision (2) of subsection 1 of this section to disclose his
3 or her name and criminal charges to other parents or guardians of
4 a patient, resident, or client, or to a consumer who is his or
5 her own guardian residing in the same facility. Such request for
6 disclosure shall inform all parties of the steps to be taken in
7 the event consent to disclose is given or denied. Refusal to
8 grant consent under this subsection by a parent or guardian of a
9 patient, resident, or client, or a consumer who is his or her own
10 guardian, of a facility licensed, certified, or funded by the
11 department, shall not prevent placement.

12 5. Any rule or portion of a rule, as that term is defined
13 in section 536.010, RSMo, that is created under the authority
14 delegated in this section shall become effective only if it
15 complies with and is subject to all of the provisions of chapter
16 536, RSMo, and, if applicable, section 536.028, RSMo.

17 630.140. 1. Information and records compiled, obtained,
18 prepared or maintained by the residential facility, day program
19 operated, funded or licensed by the department or otherwise,
20 specialized service, or by any mental health facility or mental
21 health program in which people may be civilly detained pursuant
22 to chapter 632, RSMo, in the course of providing services to
23 either voluntary or involuntary patients, residents or clients
24 shall be confidential.

25 2. The facilities or programs shall disclose information
26 and records including medication given, dosage levels, and
27 individual ordering such medication to the following upon their
28 request:

- 1 (1) The parent of a minor patient, resident or client;
- 2 (2) The guardian or other person having legal custody of
3 the patient, resident or client;
- 4 (3) The attorney of a patient, resident or client who is a
5 ward of the juvenile court, an alleged incompetent, an
6 incompetent ward or a person detained under chapter 632, RSMo, as
7 evidenced by court orders of the attorney's appointment;
- 8 (4) An attorney or personal physician as authorized by the
9 patient, resident or client;
- 10 (5) Law enforcement officers and agencies, information
11 about patients, residents or clients committed pursuant to
12 chapter 552, RSMo, but only to the extent necessary to carry out
13 the responsibilities of their office, and all such law
14 enforcement officers shall be obligated to keep such information
15 confidential;
- 16 (6) The entity or agency authorized to implement a system
17 to protect and advocate the rights of persons with developmental
18 disabilities under the provisions of 42 U.S.C. Sections 15042 to
19 15044. The entity or agency shall be able to obtain access to
20 the records of a person with developmental disabilities who is a
21 client of the entity or agency if such person has authorized the
22 entity or agency to have such access; and the records of any
23 person with developmental disabilities who, by reason of mental
24 or physical condition is unable to authorize the entity or agency
25 to have such access, if such person does not have a legal
26 guardian, conservator or other legal representative, and a
27 complaint has been received by the entity or agency with respect
28 to such person or there is probable cause to believe that such

1 person has been subject to abuse or neglect. The entity or
2 agency obtaining access to a person's records shall meet all
3 requirements for confidentiality as set out in this section;

4 (7) The entity or agency authorized to implement a system
5 to protect and advocate the rights of persons with mental illness
6 under the provisions of 42 U.S.C. 10801 shall be able to obtain
7 access to the records of a patient, resident or client who by
8 reason of mental or physical condition is unable to authorize the
9 system to have such access, who does not have a legal guardian,
10 conservator or other legal representative and with respect to
11 whom a complaint has been received by the system or there is
12 probable cause to believe that such individual has been subject
13 to abuse or neglect. The entity or agency obtaining access to a
14 person's records shall meet all requirements for confidentiality
15 as set out in this section. The provisions of this subdivision
16 shall apply to a person who has a significant mental illness or
17 impairment as determined by a mental health professional
18 qualified under the laws and regulations of the state;

19 (8) To mental health coordinators, but only to the extent
20 necessary to carry out their duties under chapter 632, RSMo.

21 3. The facilities or services may disclose information and
22 records under any of the following:

23 (1) As authorized by the patient, resident or client;

24 (2) To persons or agencies responsible for providing health
25 care services to such patients, residents or clients;

26 (3) To the extent necessary for a recipient to make a claim
27 or for a claim to be made on behalf of a recipient for aid or
28 insurance;

1 (4) To qualified personnel for the purpose of conducting
2 scientific research, management audits, financial audits, program
3 evaluations or similar studies; provided, that such personnel
4 shall not identify, directly or indirectly, any individual
5 patient, resident or client in any report of such research, audit
6 or evaluation, or otherwise disclose patient, resident or client
7 identities in any manner;

8 (5) To the courts as necessary for the administration of
9 chapter 211, RSMo, 475, RSMo, 552, RSMo, or 632, RSMo;

10 (6) To law enforcement officers or public health officers,
11 but only to the extent necessary to carry out the
12 responsibilities of their office, and all such law enforcement
13 and public health officers shall be obligated to keep such
14 information confidential;

15 (7) Pursuant to an order of a court or administrative
16 agency of competent jurisdiction;

17 (8) To the attorney representing petitioners, but only to
18 the extent necessary to carry out their duties under chapter 632,
19 RSMo;

20 (9) To the department of social services or the department
21 of health and senior services as necessary to report or have
22 investigated abuse, neglect, or rights violations of patients,
23 residents, or clients;

24 (10) To a county board established pursuant to sections
25 205.968 to 205.972, RSMo 1986, but only to the extent necessary
26 to carry out their statutory responsibilities. The county board
27 shall not identify, directly or indirectly, any individual
28 patient, resident or client;

1 (11) To parents, legal guardians, treatment professionals,
2 law enforcement officers, and other individuals who by having
3 such information could mitigate the likelihood of a suicide. The
4 facility treatment team shall have determined that the consumer's
5 safety is at some level of risk.

6 4. The facility or program shall document the dates,
7 nature, purposes and recipients of any records disclosed under
8 this section and sections 630.145 and 630.150.

9 5. The records and files maintained in any court proceeding
10 under chapter 632, RSMo, shall be confidential and available only
11 to the patient, the patient's attorney, guardian, or, in the case
12 of a minor, to a parent or other person having legal custody of
13 the patient, and to the petitioner and the petitioner's attorney,
14 and to the Missouri state highway patrol for reporting to the
15 National Instant Criminal Background Check System (NICS). In
16 addition, the court may order the release or use of such records
17 or files only upon good cause shown, and the court may impose
18 such restrictions as the court deems appropriate.

19 6. Nothing contained in this chapter shall limit the rights
20 of discovery in judicial or administrative procedures as
21 otherwise provided for by statute or rule.

22 7. The fact of admission of a voluntary or involuntary
23 patient to a mental health facility under chapter 632, RSMo, may
24 only be disclosed as specified in subsections 2 and 3 of this
25 section.

26 630.163. 1. Any person having reasonable cause to suspect
27 that a vulnerable person presents a likelihood of suffering
28 serious physical harm or is the victim of abuse or neglect shall

1 report such information to the department. Reports of vulnerable
2 person abuse received by the departments of health and senior
3 services and social services shall be forwarded to the
4 department.

5 2. The report shall be made orally or in writing. It shall
6 include, if known:

7 (1) The name, age, and address of the vulnerable person;

8 (2) The name and address of any person responsible for the
9 vulnerable person's care;

10 (3) The nature and extent of the vulnerable person's
11 condition; and

12 (4) Other relevant information.

13 3. The department shall have primary responsibility for
14 investigating reported incidents of abuse and neglect of
15 vulnerable persons.

16 4. Reports regarding persons determined not to be
17 vulnerable persons as defined in section 630.005 shall be
18 referred to the appropriate state or local authorities.

19 5. The department shall collaborate with the departments of
20 health and senior services and social services to maintain a
21 statewide toll free phone number for receipt of reports.

22 630.165. 1. When any physician, physician assistant,
23 dentist, chiropractor, optometrist, podiatrist, intern, resident,
24 nurse, nurse practitioner, medical examiner, social worker,
25 licensed professional counselor, certified substance abuse
26 counselor, psychologist, other health practitioner, minister,
27 Christian Science practitioner, peace officer, pharmacist,
28 physical therapist, facility administrator, nurse's aide or

1 orderly in a residential facility, day program or specialized
2 service operated, funded or licensed by the department or in a
3 mental health facility or mental health program in which people
4 may be admitted on a voluntary basis or are civilly detained
5 pursuant to chapter 632, RSMo, or employee of the [department]
6 departments of social services, mental health, or health and
7 senior services; or home health agency or home health agency
8 employee; hospital and clinic personnel engaged in examination,
9 care, or treatment of persons; in-home services owner, provider,
10 operator, or employee; law enforcement officer, long-term care
11 facility administrator or employee; mental health professional,
12 probation or parole officer, or other nonfamilial person with
13 responsibility for the care of a patient, resident, or client of
14 a facility, program, or service has reasonable cause to [believe]
15 suspect that a patient, resident or client of a facility, program
16 or service has been [abused or neglected, he or she shall
17 immediately report or cause a report to be made to the department
18 or the department of health and senior services, if such facility
19 or program is licensed pursuant to chapter 197, RSMo] subjected
20 to abuse or neglect or observes such person being subjected to
21 conditions or circumstances that would reasonably result in abuse
22 or neglect, he or she shall immediately report or cause a report
23 to be made to the department in accordance with section 630.163.

24 2. [The report shall contain the name and address of the
25 residential facility, day program or specialized service; the
26 name of the patient, resident or client; information regarding
27 the nature of the abuse or neglect; the name of the complainant,
28 and any other information which might be helpful in an

1 investigation] Any person who knowingly fails to make a report as
2 required in subsection 1 of this section is guilty of a class A
3 misdemeanor and shall be subject to a fine up to one thousand
4 dollars. Penalties collected for violations of this section
5 shall be transferred to the state school moneys fund as
6 established in section 166.051, RSMo, and distributed to the
7 public schools of this state in the manner provided in section
8 163.031, RSMo. Such penalties shall not considered charitable
9 for tax purposes.

10 3. [Any person required in subsection 1 of this section to
11 report or cause a report to be made to the department who fails
12 to do so within a reasonable time after the act of abuse or
13 neglect is guilty of an infraction] Every person who has been
14 previously convicted of or pled guilty to failing to make a
15 report as required in subsection 1 of this section and who is
16 subsequently convicted of failing to make a report under
17 subsection 2 of this section is guilty of a class D felony and
18 shall be subject to a fine up to five thousand dollars.
19 Penalties collected for violation of this subsection shall be
20 transferred to the state school moneys fund as established in
21 section 166.051, RSMo, and distributed to the public schools of
22 this state in the manner provided in section 163.031, RSMo. Such
23 penalties shall not considered charitable for tax purposes.

24 4. [In addition to those persons required to report under
25 subsection 1 of this section, any other person having reasonable
26 cause to believe that a resident has been abused or neglected may
27 report such information to the department] Any person who
28 knowingly files a false report of vulnerable person abuse or

1 neglect is guilty of a class A misdemeanor and shall be subject
2 to a fine up to one thousand dollars. Penalties collected for
3 violations of this subsection shall be transferred to the state
4 school moneys fund as established in section 166.051, RSMo, and
5 distributed to the public schools of this state in the manner
6 provided in section 163.031, RSMo. Such penalties shall not
7 considered charitable for tax purposes.

8 5. [Any person who knowingly files a false report of abuse
9 or neglect is guilty of a class A misdemeanor] Every person who
10 has been previously convicted of or pled guilty to making a false
11 report to the department and who is subsequently convicted of
12 making a false report under subsection 4 of this section is
13 guilty of a class D felony and shall be subject to a fine up to
14 five thousand dollars. Penalties collected for violations of
15 this subsection shall be transferred to the state school moneys
16 fund as established in section 166.051, RSMo, and distributed to
17 the public schools of this state in the manner provided in
18 section 163.031, RSMo. Such penalties shall not considered
19 charitable for tax purposes.

20 6. [Any person having a prior conviction of filing false
21 reports and who subsequently files a false report of abuse or
22 neglect pursuant to this section or section 565.188, RSMo, is
23 guilty of a class D felony] Evidence of prior convictions of
24 false reporting shall be heard by the court, out of the hearing
25 of the jury, prior to the submission of the case to the jury, and
26 the court shall determine the existence of the prior convictions.

27 7. Any residential facility, day program, or specialized
28 service operated, funded, or licensed by the department that

1 prevents or discourages a patient, resident, or client, employee,
2 or other person from reporting that a patient, resident, or
3 client of a facility, program, or service has been abused or
4 neglected shall be subject to loss of their license issued
5 pursuant to sections 630.705 to 630.760 and civil fines of up to
6 five thousand dollars for each attempt to prevent or discourage
7 reporting.

8 630.167. 1. Upon receipt of a report, the department or
9 its agents, contractors or vendors or the department of health
10 and senior services, if such facility or program is licensed
11 pursuant to chapter 197, RSMo, shall initiate an investigation
12 within twenty-four hours.

13 2. If the investigation indicates possible abuse or neglect
14 of a patient, resident or client, the investigator shall refer
15 the complaint together with the investigator's report to the
16 department director for appropriate action. If, during the
17 investigation or at its completion, the department has reasonable
18 cause to believe that immediate removal from a facility not
19 operated or funded by the department is necessary to protect the
20 residents from abuse or neglect, the department or the local
21 prosecuting attorney may, or the attorney general upon request of
22 the department shall, file a petition for temporary care and
23 protection of the residents in a circuit court of competent
24 jurisdiction. The circuit court in which the petition is filed
25 shall have equitable jurisdiction to issue an ex parte order
26 granting the department authority for the temporary care and
27 protection of the resident for a period not to exceed thirty
28 days.

1 3. (1) Except as otherwise provided in this section,
2 reports referred to in section 630.165 and the investigative
3 reports referred to in this section shall be confidential, shall
4 not be deemed a public record, and shall not be subject to the
5 provisions of section 109.180, RSMo, or chapter 610, RSMo[;
6 except that complete copies of all such reports shall be open and
7 available]. Investigative reports pertaining to abuse and
8 neglect shall remain confidential until a final report is
9 complete, subject to the conditions contained in this section.
10 Final reports of substantiated abuse or neglect issued on or
11 after the effective date of this section are open and shall be
12 available for release in accordance with chapter 610, RSMo. The
13 names and all other identifying information in such final
14 substantiated reports, including diagnosis and treatment
15 information about the patient, resident, or client who is the
16 subject of such report, shall be confidential and may only be
17 released to the patient, resident, or client who has not been
18 adjudged incapacitated under chapter 475, RSMo, the custodial
19 parent or guardian parent, or other guardian of the patient,
20 resident or client. The names and other descriptive information
21 of the complainant, witnesses, or other persons for whom findings
22 are not made against in the final substantiated report shall be
23 confidential and not deemed a public record. Final reports of
24 unsubstantiated allegations of abuse and neglect shall remain
25 closed records and shall only be released to the parents or other
26 guardian of the patient, resident, or client who is the subject
27 of such report, patient, resident, or client and the department
28 vendor, provider, agent, or facility where the patient, resident,

1 or client was receiving department services at the time of the
2 unsubstantiated allegations of abuse and neglect, but the names
3 and any other descriptive information of the complainant or any
4 other person mentioned in the reports shall not be disclosed
5 unless such complainant or person specifically consents to such
6 disclosure. Requests for final reports of substantiated or
7 unsubstantiated abuse or neglect from a patient, resident or
8 client who has not been adjudged incapacitated under chapter 475,
9 RSMo, may be denied or withheld if the director of the department
10 or his or her designee determines that such release would
11 jeopardize the person's therapeutic care, treatment,
12 habilitation, or rehabilitation, or the safety of others and
13 provided that the reasons for such denial or withholding are
14 submitted in writing to the patient, resident or client who has
15 not been adjudged incapacitated under chapter 475, RSMo. All
16 reports referred to in this section shall be admissible in any
17 judicial proceedings or hearing in accordance with section
18 36.390, RSMo, or any administrative hearing before the director
19 of the department of mental health, or the director's designee.
20 All such reports may be disclosed by the department of mental
21 health to law enforcement officers and public health officers,
22 but only to the extent necessary to carry out the
23 responsibilities of their offices, and to the department of
24 social services, and the department of health and senior
25 services, and to boards appointed pursuant to sections 205.968 to
26 205.990, RSMo, that are providing services to the patient,
27 resident or client as necessary to report or have investigated
28 abuse, neglect, or rights violations of patients, residents or

1 clients provided that all such law enforcement officers, public
2 health officers, department of social services' officers,
3 department of health and senior services' officers, and boards
4 shall be obligated to keep such information confidential;

5 (2) Except as otherwise provided in this section, the
6 proceedings, findings, deliberations, reports and minutes of
7 committees of health care professionals as defined in section
8 537.035, RSMo, or mental health professionals as defined in
9 section 632.005, RSMo, who have the responsibility to evaluate,
10 maintain, or monitor the quality and utilization of mental health
11 services are privileged and shall not be subject to the
12 discovery, subpoena or other means of legal compulsion for their
13 release to any person or entity or be admissible into evidence
14 into any judicial or administrative action for failure to provide
15 adequate or appropriate care. Such committees may exist, either
16 within department facilities or its agents, contractors, or
17 vendors, as applicable. Except as otherwise provided in this
18 section, no person who was in attendance at any investigation or
19 committee proceeding shall be permitted or required to disclose
20 any information acquired in connection with or in the course of
21 such proceeding or to disclose any opinion, recommendation or
22 evaluation of the committee or board or any member thereof;
23 provided, however, that information otherwise discoverable or
24 admissible from original sources is not to be construed as immune
25 from discovery or use in any proceeding merely because it was
26 presented during proceedings before any committee or in the
27 course of any investigation, nor is any member, employee or agent
28 of such committee or other person appearing before it to be

1 prevented from testifying as to matters within their personal
2 knowledge and in accordance with the other provisions of this
3 section, but such witness cannot be questioned about the
4 testimony or other proceedings before any investigation or before
5 any committee;

6 (3) Nothing in this section shall limit authority otherwise
7 provided by law of a health care licensing board of the state of
8 Missouri to obtain information by subpoena or other authorized
9 process from investigation committees or to require disclosure of
10 otherwise confidential information relating to matters and
11 investigations within the jurisdiction of such health care
12 licensing boards; provided, however, that such information, once
13 obtained by such board and associated persons, shall be governed
14 in accordance with the provisions of this subsection;

15 (4) Nothing in this section shall limit authority otherwise
16 provided by law in subdivisions (5) and (6) of subsection 2 of
17 section 630.140 concerning access to records by the entity or
18 agency authorized to implement a system to protect and advocate
19 the rights of persons with developmental disabilities under the
20 provisions of 42 U.S.C. Sections 15042 to 15044 and the entity or
21 agency authorized to implement a system to protect and advocate
22 the rights of persons with mental illness under the provisions of
23 42 U.S.C. 10801. In addition, nothing in this section shall
24 serve to negate assurances that have been given by the governor
25 of Missouri to the U.S. Administration on Developmental
26 Disabilities, Office of Human Development Services, Department of
27 Health and Human Services concerning access to records by the
28 agency designated as the protection and advocacy system for the

1 state of Missouri. However, such information, once obtained by
2 such entity or agency, shall be governed in accordance with the
3 provisions of this subsection.

4 4. Anyone who makes a report pursuant to this section or
5 who testifies in any administrative or judicial proceeding
6 arising from the report shall be immune from any civil liability
7 for making such a report or for testifying unless such person
8 acted in bad faith or with malicious purpose.

9 5. Within five working days after a report required to be
10 made pursuant to this section is received, the person making the
11 report shall be notified in writing of its receipt and of the
12 initiation of the investigation.

13 6. No person who directs or exercises any authority in a
14 residential facility, day program or specialized service shall
15 evict, harass, dismiss or retaliate against a patient, resident
16 or client or employee because he or she or any member of his or
17 her family has made a report of any violation or suspected
18 violation of laws, ordinances or regulations applying to the
19 facility which he or she has reasonable cause to believe has been
20 committed or has occurred.

21 7. Any person who is discharged as a result of an
22 administrative substantiation of allegations contained in a
23 report of abuse or neglect may, after exhausting administrative
24 remedies as provided in chapter 36, RSMo, appeal such decision to
25 the circuit court of the county in which such person resides
26 within ninety days of such final administrative decision. The
27 court may accept an appeal up to twenty-four months after the
28 party filing the appeal received notice of the department's

determination, upon a showing that:

(1) Good cause exists for the untimely commencement of the request for the review;

(2) If the opportunity to appeal is not granted it will adversely affect the party's opportunity for employment; and

(3) There is no other adequate remedy at law.

630.725. 1. The department shall revoke a license or deny an application for a license in any case in which it finds a substantial failure to comply with the standards established under its rules or the requirements established under sections 630.705 to 630.760.

2. Any person aggrieved by the action of the department to deny or revoke a license under the provisions of sections 630.705 to 630.760 may seek a determination of the department director's decision by the administrative hearing commission pursuant to the provisions of section 621.045, RSMo. It shall not be a condition to such determination that the person aggrieved seek a reconsideration, a rehearing or exhaust any other procedure within the department.

3. The administrative hearing commission may stay the revocation of such license, pending the commission's finding and determination in the cause, upon such conditions as the commission deems necessary and appropriate including the posting of bond or other security except that the commission shall not grant a stay or if a stay has already been entered shall set aside its stay, if upon application of the department the commission finds reason to believe that continued operation of a residential facility or day program pending the commission's

1 final determination would present an imminent danger to the
2 health, safety or welfare of any resident or a substantial
3 probability that death or serious physical harm would result. In
4 any case in which the department has refused to issue a license,
5 the commission shall have no authority to stay or to require the
6 issuance of a license pending final determination by the
7 commission.

8 4. The administrative hearing commission shall make the
9 final decision as to the issuance or revocation of a license.
10 Any person aggrieved by a final decision of the administrative
11 hearing commission, including the department, may seek judicial
12 review of such decision by filing a petition for review in the
13 court of appeals for the district in which the facility or
14 program is located. Review shall be had, except as modified
15 herein, in accordance with the provisions of sections 621.189 and
16 621.193, RSMo.

17 5. The department of mental health shall notify the
18 department of health and senior services within ten days of
19 revoking a license under this section. If the department of
20 health and senior services has not already done so, the
21 department of health and senior services shall within thirty days
22 of notification from the department of mental health, initiate an
23 investigation of the facility to determine whether licensure
24 action under sections 198.022 or 198.036, RSMo, is appropriate.

25 630.755. 1. An action may be brought by the department, or
26 by the attorney general on his own volition or at the request of
27 the department or any other appropriate state agency, to
28 temporarily or permanently enjoin or restrain any violation of

1 sections 630.705 to 630.760, to enjoin the acceptance of new
2 residents until substantial compliance with sections 630.705 to
3 630.760 is achieved, or to enjoin any specific action or practice
4 of the residential facility or day program. Any action brought
5 under the provisions of this section shall be placed at the head
6 of the docket by the court and the court shall hold a hearing on
7 any action brought under the provisions of this section no less
8 than fifteen days after the filing of the action.

9 2. Any facility or program which has received a notice of
10 noncompliance as provided by sections 630.745 to 630.750 is
11 liable to the state for civil penalties of up to [one hundred]
12 ten thousand dollars for each day that noncompliance continues
13 after the notice of noncompliance is received. The attorney
14 general shall, upon the request of the department, bring an
15 action in a circuit court of competent jurisdiction to recover
16 the civil penalty. The court shall have the authority to
17 determine the amount of civil penalty to be assessed within the
18 limits set out in this section. Appeals may be taken from the
19 judgment of the circuit court as in other civil cases.

20 3. The imposition of any remedy provided for in sections
21 630.705 to 630.760 shall not bar the imposition of any other
22 remedy.

23 4. Penalties collected for violations of this section shall
24 be transferred to the state schools moneys established under
25 section 166.051, RSMo. Such penalties shall not be considered a
26 charitable contribution for tax purposes.

27 5. To recover any civil penalty, the moving party shall
28 prove by a preponderance of the evidence that the violation

1 occurred.

2 630.925. 1. The director of the department shall establish
3 a mental health fatality review panel to review deaths of all
4 adults in the care and custody of the department. The panel
5 shall be formed and shall operate according to the rules,
6 guidelines, and protocols provided by the department of mental
7 health.

8 2. The panel shall include, but shall not be limited to,
9 the following:

10 (1) A prosecuting or circuit attorney;

11 (2) A coroner or medical examiner;

12 (3) Law enforcement personnel;

13 (4) A representative from the departments of mental health,
14 social services, health and senior services, and public safety;

15 (5) A representative of the Missouri Protection and
16 Advocacy.

17 3. The director of the department of mental health shall
18 organize the panel and shall call the first organizational
19 meeting of the panel. The panel shall elect a chairman who shall
20 convene the panel to meet at least quarterly to review all
21 suspicious deaths of patients, residents, or clients who are in
22 the care and custody of the department of mental health, which
23 meet guidelines for review as set forth by the department of
24 mental health. In addition, the panel may review at its own
25 discretion any death reported to it by the medical examiner,
26 coroner, or a parent or legal representative of a client in the
27 care and custody of the department, even if it does not meet
28 criteria for review as set forth by the department. The panel

1 shall issue a final report, which shall be a public record, of
2 each investigation to the department of mental health. The final
3 report shall include a completed summary report form. The form
4 shall be developed by the director of the department of mental
5 health. The department of mental health shall analyze the mental
6 health fatality review panel reports and periodically prepare
7 epidemiological reports which describe the incidence, causes,
8 location, and other factors. The department of mental health
9 shall make recommendations and develop programs to prevent
10 patient, resident, or client injuries and deaths.

11 4. For purposes of this section, "suspicious death" shall
12 include but not be limited to when the following occurs:

- 13 (1) A crime is involved;
14 (2) An accident has occurred;
15 (3) A medical prognosis has not been ascertained; or
16 (4) A person has died unexpectedly.

17 5. The mental health fatality review panel shall enjoy such
18 official immunity as exists at common law.

19 630.927. 1. The director of the department of mental
20 health shall promulgate rules, guidelines, and protocols for the
21 mental health fatality review panel established pursuant to
22 section 630.925.

23 2. The director shall promulgate guidelines and protocols
24 for coroner and medical examiners to use to help them to identify
25 suspicious deaths of patients, residents, or clients in the care
26 and custody of the department of mental health.

27 3. Any rule or portion of a rule, as that term is defined
28 in section 536.010, RSMo, that is created under the authority

1 delegated in this section shall become effective only if it
2 complies with and is subject to all of the provisions of chapter
3 536, RSMo, and, if applicable, section 536.028, RSMo. This
4 section and chapter 536, RSMo, are nonseverable and if any of the
5 powers vested with the general assembly pursuant to chapter 536,
6 RSMo, to review, to delay the effective date, or to disapprove
7 and annul a rule are subsequently held unconstitutional, then the
8 grant of rulemaking authority and any rule proposed or adopted
9 after August 28, 2007, shall be invalid and void.

10 4. All meetings conducted, all reports and records made and
11 maintained pursuant to sections 630.925 and 630.927 by the
12 department of mental health, or other appropriate persons,
13 officials, or state mental health fatality review panel shall be
14 confidential and shall not be open to the general public except
15 for the annual report pursuant to section 630.925.

16 630.950. Any department employee or employee of a
17 residential facility, day program, or specialized service
18 operated, funded, or licensed by the department who reports on or
19 discusses employee job performance for the purposes of making
20 employment decisions that affect the safety of consumers and who
21 does so in good faith and without malice shall not be subject to
22 an action for civil damages as a result thereof, and no cause of
23 action shall arise against him or her as a result of his or her
24 conduct pursuant to this section. The attorney general shall
25 defend such persons in any such action or proceeding.

26 630.975. 1. The director of the department of mental
27 health shall promulgate rules, guidelines and protocols for
28 hospitals and physicians to use to help them to identify

1 suspicious deaths of patients, residents, or clients in the care
2 and custody of the department of mental health.

3 2. Any hospital, physician, medical professional, mental
4 health professional, or department of mental health facility
5 shall disclose upon request all records, medical or social, of
6 any client in the care and custody of the department of mental
7 health who has died to the mental health fatality review panel
8 established under section 630.925 to investigate the person's
9 death. Any legally recognized privileged communication, except
10 that between attorney and client, shall not apply to situations
11 involving the death of a client in the care and custody of the
12 department of mental health.

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20 Michael Gibbons

Bryan Stevenson